

LABOUR DEPARTMENT

The 11th October, 1977

No. 10556-4Lab-77/27262.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana, is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Jagtar Singh and Co., Anaj Mandi, Ambala City.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 101 of 1977

between

SHRI GURDEV SINGH, WORKMAN AND THE MANAGEMENT OF M/S JAGTAR SINGH AND CO., ANAJ MANDI, AMBALA CITY

AWARD

By order No. ID/AMB/532-A-77/30226, dated 19th August, 1977, the Governor of Haryana referred the following dispute between the management of M/s Jagtar Singh and Co., Anaj Mandi, Ambala City audits workman Shri Gurdev Singh to this Court for adjudication in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Gurdev Singh was justified and in order ? If not, to what relief is he entitled ?

Whereas the workman concerned put in his appearance before me in this Court on 28th September, 1977 in response to the usual notices of reference sent to him, the management failed to appear despite service of such notices effected on them by way of their refusal to receive the same contained in a registered envelope offered to them for delivery by the postal authorities with the result that *ex parte* proceedings were taken up against them.

The workman appearing as his own witness in *ex parte* evidence supported the demand and deposed that he was employed by the management concerned as a truck driver on 24th June, 1975 and the later terminated his services arbitrarily and illegally with effect from 13th November, 1976 without assigning any reasons or serving charge-sheet on him or holding an enquiry and that they even failed to appear before the Conciliation Officer on the fixed date of hearing despite being called to explain their conduct. He tendered in evidence the copy of the report of the Conciliation Officer Ex. W-1 in support of his statement.

I, see no reasons to disbelieve the statement of the workman concerned particularly when the proceedings against the management are *ex parte* and they have taken no care to defend the demand leading to this reference. I, thus relying on the statement of the workman hold that the termination of his services as a truck driver on wages of Rs 300 P.M. by the management with effect from 13th November, 1976 was unjustified and he is entitled to be reinstated with continuity of service and full back wages. I, accordingly answer the reference while returning the award in these terms.

Dated, the 28th September, 1977.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2078, dated the 30th September, 1977.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 10536-4Lab-77/27268.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the Workmen and the management of M/s Roneo Vickers India Ltd., Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 195 of 1974

*between*SHRI BHUR SINGH WORKMAN AND THE MANAGEMENT OF M/S RONEO VICKERS INDIA
LIMITED, FARIDABAD*Present :*

Shri Bhim Singh Yadav, for the workman.

Shri C.M. Lall; for the management.

AWARD

By order No. ID/FD/75/37282, dated 15th November, 1974 the Governor of Haryana, referred the following dispute between the management of M/s Roneo Vickers India Ltd., Faridabad and its workman Shri Bhur Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Bhur Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and put in their pleadings. On the pleadings of the parties, the following issues were framed by my learned predecessor on 12th June, 1975 :—

- (1) Whether the demands the subject matter of the present reference was first raised on the management and rejected by it before taking up the matter for conciliation ?
- (2) Whether the reference is bad in law and without jurisdiction as alleged in para 3 of the preliminary objection in the written statement ?
- (3) Whether the statement of claim has not been properly signed and verified as required by law and Shri Bhim Singh Yadav had no locus standi to file the same ?
- (4) Whether the termination of services of Shri Bhur Singh was justified and in order ? If not, to what relief is he entitled ?

The case was fixed for evidence of the parties on 20th August, 1975 on issues Nos. 1, 2 and 3 which were treated preliminary. On 20th August, 1975 my learned predecessor had to go on tour, hence the case was fixed for 9th October, 1975. On 9th October, 1975 my learned predecessor ordered that the workman shall adduce his evidence on all the issues. On 20th January, 1976 the representative of the workman stated that he did not want to lead any evidence on issue No. 1. Then my learned predecessor fixed the case for evidence of the parties on issue No. 2. Then the case was fixed for admission or denial of documents filed by the management and the case was fixed for the evidence of the management. The management examined one Shri Ashok Kumar Vats, their office Supervisor as M.W. 1 who stated that the workman was appointed as a spot Welder on 1st June, 1971,—*Vide* appointment letter copy whereof is Exhibit M-1. His services were terminated on 11th August, 1971 on the ground of unsatisfactory work and negligence during the period of probation. The workman had raised a demand and then settlement copy whereof is Exhibit M-2 was arrived at on 31st August, 1971 during conciliation proceedings. The workman then was reinstated without back wages with effect from 1st September, 1971. The workman thereafter became more hostile and irresponsible, exhibited lack of interest and negligence and did not improve at all. His services were again terminated on 2nd December, 1971,—*vide* letter copy whereof is Exhibit M-3. He further stated that they did not receive any demand notice from the workman. He further stated that the Government has declined to make the reference firstly but subsequently the Government made the reference but without providing them an opportunity to them. In cross-examination he stated that the management had sent his dues to the workman,—*vide* letter copy whereof is Exhibit W-1. He admitted the letters Exhibit W2, W-3 as having been sent to the workman by the management. He further admitted that no domestic enquiry was held against the workman. He denied the suggestion that the workman was employed with effect from 25th July, 1970, the management closed their case.

Then the case was fixed for the evidence of the workman. The workman examined one Shri Ram Chander as W.W. 1 who stated that he was in the service of the management since August, 1970. He knew the workman concerned employed with the management since before he joined their service. He was a Welder. He deposed that he was in the service of the management even then. In cross-examination he stated that he

did not know if the workman concerned was casual, temporary, or permanent workman in August, 1970. Then the workman concerned examined himself as W.W. 2 who deposed that he joined the service of the management on 25th July, 1970 as a Fitter,—*vide* verbal order of the management and was not given any appointment letter in writing at a wage of Rs 250 P. M. He was paid Rs 129 P. M. He wrote a letter in this connection and handed over to Shri Malhotra the then Supervisor, the management replied that letter. The workman concerned then again handed over another letter copy Exhibit M-2 to Shri Malhotra. He deposed that the management gave him the appointment letter Exhibit W-3 after he had given letters to them copies whereof are Exhibit W-1 and W-2. The management instead of increasing my pay terminated my services. He did not remember the date of termination of the services. He further stated that he was reinstated,—*vide* settlement Exhibit M-2 and he joined duty on 1st September, 1971 and his services were again terminated on 5th August, 1971. Here the month 8th seems to be under an error. He further stated that he send demand notice to the management as well as to the conciliation officer but the conciliation officer did not accept it. He did not receive the copy of report of the conciliation officer. In cross-examination he stated that he was taken on duty by conciliation settlement copy Exhibit M-2. He further said that he had ever told to the management that he shall work only on higher wage. However, he admitted that he had requested the management for increasing his pay. The workman then examined Shri Shiv Ram E.S.I. Clerk as WW. 3 who had brought relevant record. He stated that the date of appointment of the workman concerned has been shown as 8th August, 1970 in their office record and there are signatures of the employer and employees on the declaration. That declaration form is sent to them by the management but is filled in by the workman. In cross-examination he stated that contribution to E.S.I. scheme starts from the date the workman joined service irrespective of the nature of the job whether temporary, probation or permanent. He further deposed that he could not tell whether on 8th August, 1970 the workman concerned was temporary, permanent or on probation. He however, could not tell whether the contribution to E.S.I. scheme in respect of the workman has been regular or not. The workman concerned then examined Shri Ashok Kumar Vats, Factory, Office Superintendent as W.W. 4 who stated that they had no record pertaining to the year 1970 and that he could not say as to how many workers were working at that time. He deposed that in June, 1970 the workmen were working in the factory but they had no record of that year such as Attendance Register, payment of wages register. He brought attendance register beginning from the year 1971 and on that the workman was not present. He stated that he searched for the registers summoned but he could not find. He had brought payment of wages register commencing from June, 1971 and for that month the workman concerned has drawn his wages. He could not find payment of wages register prior to June, 1971 and therefore he could not bring it. He had brought Pay Bill for the year June, 1971 which was in three separate sheets. He stated that they maintained individual sheets for pay bill of each month. He denied that they had been taken out of a proper file. He stated that in June, 1971 there were 16 Administrative staff and 66 workmen whose names were entered in that pay bills. He further stated that the workman was first employed as a casual workman. He further stated that he was given regular appointment from 1st June, 1971.

The case was then fixed for arguments. Arguments were heard. I have considered all the documents produced by both the parties. Both the parties have led their evidence on all the issues. Exhibit M-1 reads that the workman will be on probation upto 31st December, 1971 and during that period each party will be at liberty to terminate the appointment by giving 24 hours notice. It further reads that the workman concerned shall be confirmed in writing on successful completion of that period but subject to the Company's confirmation in writing. There are other matters in Exhibit M-1 but they are not relevant. Exhibit M-2 is the settlement,—*vide* which the workman concerned was reinstated without back wages. Exhibit M-3 is the letter of termination of services.

I have seen the documents of the workman also. In Ex. W-4 the workman has stated that his appointment, date was 25th July, 1970 and not 1st June, 1971. Ex. W-3 is of no importance on the matter. Similar is Ex. W-2, Ex. W-1 dated 17th March, 1972 gives details of wages, it is of no importance. Ex. W-8 bear the date of appointment as 8th August, 1970. Ex. W-9 is an attested true copy of the declaration form sent to the E.S.I. office by the management. The original is signed by the Factory Manager for the management. It bears the date of appointment 8th August, 1970. It is correct that the workman in order to prove the truthfulness of his claim examined the factory office Superintendent of the management as W.W. 4 but this witness did not bring any record prior to June, 1971. He brought the record from onwards 1st June, 1971 but even the payment of Wages register prior to June, 1971 even pertaining to May, 1971 has been withheld. The office Superintendent was under the control of the management. I can not believe this part of his statement that he searched for all records prior to 1st June, 1971 and he could find none, atleast some record prior to 1st June, 1971 could be found. It is not believable that all records prior to 1971 disappeared and the record from June, 1971 and onwards did not disappear. I am of the view that the management has withheld all the documents prior to June, 1971. The inference goes against them. Moreover when the reliable evidence of the E.S.I. local office come to prove that the date of appointment of the workman concerned is 8th August, 1970, the burden shifted on to the management to prove that the services of the workman concerned had been terminated previously also prior to 1st June, 1971. Had the records prior to June, 1971 been produced, they might prove that the workman was getting wages and was attending duty even prior to June, 1971. It was for the management to explain and prove that the services of the workman concerned prior to 1st June, 1971 were casual or temporary but nothing has been proved by them nor has been explained by them. It is correct that the workman concerned has taken appointment letter dated 1st June, 1971 and that is in English although there is an endorsement on it that the workman had signed this after understanding its translation in his own language. Ex M-2 settlement is heavy against the workman concerned because in it is described that the workman was willing to work on old wages and conditions of service

as per his appointment letter, dated 1st June, 1971.—*vide* this the management agreed to reinstate him. He was reinstated. Although here both the parties signed before the Labour Officer -cum-Conciliation Officer but the workman concerned was not so particular regarding the reference of appointment letter. He was concerned and particulars for his reinstatement which was done. The date of appointment letter might have escape his attention. Moreover it is not of much consequence because the workman himself admits that appointment letter was given to him on 1st June, 1971. The case of the workman is that he was working prior to that date on oral appointment which fact finds force and support from the E.S.I. local office record which are signed even by the employer and were sent by the employer to that office. Moreover the non-production of the summoned register by W.W. 4 goes against the management although W.W. 4 has been summoned by the workman but W.W. 4 is office Superintendent and is under the control of the management and therefore, I think this witness did not bring the record summoned by the workman. I have disbelieved that part of his statement that all the records prior to 1st June, 1971 could not be found by him. It leads me to believe that this record have been intentionally withheld by orders of the management. It is strange that even a single record prior to 1st June, 1971 could not be found and hence could not be produced. This witness stated that the workman concerned was first employed as casual or temporary but he does not give dates, at least some approximate period he could give but he has not given even that. This witness stated the truth as far as it suited to the management and has withheld the truth which did not suit the management.

I am convinced that the workman was appointed on 8th August, 1970 or some date prior to that. The legal presumption is that the same state of affairs continued till it is proved that it was discontinued at a particular time. The management has failed to prove that after 8th August, 1970 the services of the workman concerned were terminated prior to 1st June, 1971. This leads me to conclude that the service of the workman concerned continued after 8th August, 1970 upto 5th December, 1971 till his services were finally terminated by the management on the basis whereof the demand of the workman concerned leading to this reference arose.

In the circumstances, I give my findings issuewise.

Issue No. 1.—Issue No. 1 has become redundant by subsequent pronouncement of our own Hon'ble High Court of Punjab and Haryana, Chandigarh. Now it is settled law that even the demand is not raised with the management, the reference is not bad. Moreover, the workman has raised the demand,—*vide* Ex. W-6 and to the management under U.P.C. Ex. W-7. I decide this issue in favour of the workman.

Issue No. 2.—The reference is not bad in law. The Government can consider the demand notice as many as they like. It is their executive affair. The Government is not bound to hear the management prior to issuing order of reference. Therefore, I decide this issue against the management.

Issue No. 3.—I decide this issue in favour of the workman. The claim statement is signed by the authorised representative of the workman. In the order of reference also the workman is described C/o the said representative. Therefore I hold that the claim statement is properly signed.

Issue No. 4.—As per my discussions given above I find this issue against the management. I have taken the date of appointment of the workman concerned as 8th August, 1970 as entered in the E.S.I. local office report. The management could not terminate the services of the workman concerned at their own discretion in any manner they like. I find that the termination of services of the workman concerned Shri Bhur Singh was neither justified nor in order.

As far as the relief is concerned, the workman concerned in his examination in chief has no where stated that he remained un-employed during this period. On cross examination he has said that on termination of his services by the management, he did not do any job nor he tried therefore. In the circumstances, I think it would be justiciable if the workman is paid half back wages, as there is some indulgence on his part also as to why he did not try to get a job elsewhere. Neither it is the case of the management that the workman concerned had been employed gainfully elsewhere.

Dated the 14th September, 1977.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana
Faridabad.

No. 940, dated the 27th September, 1977.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

Dated the 27th September, 1977.

NATHU RAM SHARMA
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.